

PT 95-62  
Tax Type: PROPERTY TAX  
Issue: Charitable Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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HOUSING OPPORTUNITIES AND      )  
MAINTENANCE FOR THE ELDERLY,  )   Docket #   93-16-419  
INC.                          )   Parcel Index # 11-29-317-048-0000  
                               )   (Cook County)  
      Applicant                )  
                               )  
      v.                      )  
                               )  
THE DEPARTMENT OF REVENUE      )   George H. Nafziger  
OF THE STATE OF ILLINOIS      )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorneys Mary M. Donners and Michael J. Hayes appeared on behalf of Housing Opportunities and Maintenance for the Elderly, Inc. (hereinafter referred to as the "applicant").

SYNOPSIS: The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on June 6, 1995, to determine whether or not Cook County parcel No. 11-29-317-048-0000 should be exempt from real estate taxes for the 1993 assessment year.

Mr. Michael Salmon, the director of the applicant was present, and testified on behalf of the at the hearing.

The issues in this matter include first, whether the applicant is a charitable organization. The second issue is whether this parcel was owned by the applicant during the 1993 assessment year. The final issue is whether the applicant used the parcel here in issue for charitable purposes during the 1993 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a charitable organization. It is further determined that this parcel was owned by the applicant during the 1993 assessment year. Finally, it is

determined that the applicant used the parcel here in issue for primarily charitable purposes during the 1993 assessment year.

FINDINGS OF FACT:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcel here in issue did not qualify for exemption during the 1993 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 6B.

2. On October 1, 1993, the Cook County Board of Appeals transmitted an Application for Property Tax Exemption To Board of Appeals, concerning this parcel for the 1993 assessment year to the Department (Dept. Ex. No. 2).

3. On October 27, 1994, the Department denied the exemption of the applicant for this parcel for the 1993 assessment year (Dept. Ex. No. 3).

4. On November 14, 1994, one of the applicant's attorneys requested a formal hearing in this matter (Dept. Ex. No. 4).

5. The hearing in this matter, which was held on June 6, 1995, was held pursuant to that request.

6. The applicant was incorporated pursuant to the "General Not For Profit Corporation Act" of Illinois, on January 29, 1982 (Dept. Ex. No. 2F).

7. The purpose clause of the applicant's Articles of Incorporation, as amended on April 29, 1993 (Dept. Ex. No. 2G), reads in part as follows:

"To advance the welfare of the elderly by: engaging or assisting in the development, ownership, construction, renovation, rehabilitation, repair, financing, leasing, management and operation of housing for the elderly; helping and assisting with paper work in applying for city, state and federally subsidized housing programs; trying to find private housing and negotiating rentals, acceptance of pets and up-keep; renovation and repair of substandard present housing which an elderly person might not want to leave; providing furniture and other household personal items; providing post-relocation counseling and assistance; and providing counseling and referral services in all other housing matters."

8. During the 1993 assessment year, the applicant operated various programs to help the low-income elderly find affordable subsidized housing (Tr. p. 16).

9. These programs included housing assistance and counseling for the low-income elderly, a free moving service for the low-income elderly, a free transportation service for residents of certain Chicago Housing Authority elderly high-rise facilities, two weekend home delivered meal routes, and two intergenerational housing facilities (Tr. p. 16).

10. The two intergenerational housing facilities which the applicant operated during 1993, were the Pat Crowley House and the Oak Park House (Tr. p. 17).

11. The applicant ceased operating the Oak Park House during 1994 (Tr. p. 17).

12. I take Administrative Notice of the fact that the parcel on which the Pat Crowley House is located, was determined by the Department to be exempt from real estate tax in Docket No. 83-16-198 (Applicant Ex. No. B).

13. The services which the applicant provides to the elderly, other than the intergenerational housing facilities, are provided at no cost to those receiving the services (Tr. p. 19).

14. On December 31, 1992, the applicant acquired the vacant parcel here in issue (Dept. Ex. No. 2C).

15. Beginning in 1989, the board of directors of the applicant started planning and acquiring financing to build a combination, low-income, elderly, assisted living and independent living intergenerational housing facility (Tr. p. 28).

16. The project was to be named the Nathalie Salmon House, for the daughter of the director of the applicant, who was killed in an accident in 1986 (Tr. p. 27).

17. Pursuant to permission granted at the hearing in this matter, one

of the applicant's attorneys submitted two detailed chronologies of activities, concerning the adaptation of the parcel here in issue for primarily exempt use.

18. During January 1990, the applicant hired architects, Nagle & Hartray, and consultants, TACH, to work on the development of this facility.

19. On March 17, 1991, the applicant executed an option to purchase the parcel here in issue.

20. On January 1, 1993, the parcel here in issue was a vacant lot.

21. On January 13, 1993, the City of Chicago issued a building permit.

22. During the period February through April 1993, the final commitments and closing documents for the financing of the Nathalie Salmon House were reviewed and executed with the Illinois Affordable Housing Trust Fund, the Illinois Housing Development Authority, and the City of Chicago.

23. On May 12, 1993, the financial closing was held, and on May 20, 1993, the City of Chicago issued a Notice to Proceed to the general contractor on the project, Corrigan Co.

24. By December 31, 1993, the windows and roof had been installed; and the rough electrical work, plumbing, and HVAC were complete. On that date, the project was approximately 72% complete.

25. On April 14, 1994, the City of Chicago issued a Certificate of Occupancy.

26. On May 5, 1994, the Architects' Certificate of Substantial Completion was issued.

27. On May 28, 1994, the first tenant moved in.

28. The building known as the Nathalie Salmon House, which is located on the parcel here in issue and which was completed in 1994, consists of five stories and a basement, and contains approximately 4,876 square feet.

29. The ground floor contains one three-bedroom apartment, occupied by

the custodian and his family, and various public or community rooms (Tr. pp. 32 & 33).

30. The second, third, and fourth floor each contain eleven apartments. These eleven apartments include two studio apartments, six one-bedroom apartments, two two-bedroom apartments, and one three-bedroom apartment. One of the studio apartments on each floor is occupied by a young, single person, who receives a reduction in rent of \$60.00 per month, in exchange for providing three hours of service per week to the low-income elderly residents of the facility. The three-bedroom apartment on each floor is occupied by a family. The remaining nine apartments on each floor are occupied by low-income elderly persons.

31. On the fifth floor are eighteen bedrooms and several common rooms. The eighteen bedrooms have either a private or shared bath.

32. Fourteen of those bedrooms are occupied by low-income elderly persons, who are frail, but do not need nursing home care (Tr. p. 33).

33. Four of the bedrooms are occupied by young single persons who provide assistance to the low-income elderly and live there rent-free, and receive their meals, at no cost. These persons are required to provide 12 hours of assistance per week to the low-income elderly residents of this floor (Tr. pp. 88 & 89).

34. There is also a full-time paid cook and a full-time paid coordinator employed on the fifth floor. The cook and coordinator do not live on the premises.

35. The applicant has set as the minimum income level, for the low-income elderly in the facility on this parcel, the amount paid by the Social Security Administration as supplemental security income or SSI. If a prospective tenant is not receiving that minimum amount, the applicant will assist them in applying for SSI. After a low-income elderly person moves into this facility, if his or her income is reduced, the applicant

reduces, or waives, that person's rent, as needed. No low-income elderly person has ever been evicted from one of the applicant's housing facilities (Tr. p. 37).

36. The applicant has established a market rent for each size of apartment in the Nathalie Salmon House. The applicant requests that the low-income elderly tenants pay not more than 30% of their income as rent, not to exceed the established market rent for their apartment.

37. As of June 1, 1995, all of the low-income elderly tenants were paying less than the market rent for their second, third, or fourth floor apartments (Applicant Ex. No. F).

38. The low-income elderly residents of the fourteen bedrooms on the fifth floor pay not more than 80% of their income as room and board, not to exceed the established market rent for their bedrooms.

39. As of June 1, 1995, four of the low-income elderly, residents on the fifth floor were paying the market rent, which included meals (Applicant Ex. No. F). The remainder of the low-income elderly residents were paying less than market rent.

40. All of the low-income elderly residents of this building who are not paying the market rent are being subsidized, either by the U.S. Department of Housing and Urban Development pursuant to what are commonly known as Section 8 subsidies, or by the applicant using funds which have been given to it, either as contributions or as government grants for that purpose.

41. While the lease form which the applicant uses with the low-income elderly tenants contains a provision for late charges, the applicant does not enforce that provision (Tr. p. 85).

42. No evidence was offered that the applicant waived, or reduced, the rents of the low-income occupants of the three-bedroom apartments on the second, third, and fourth floors.

43. Each of the apartments occupied by the low-income elderly, as well as the sleeping rooms on the fifth floor, contain emergency call buttons which the residents may use to summon help, in case they would fall or have another type of emergency.

44. The custodian of the building who occupies the three-bedroom apartment on the first floor, in addition to his cleaning and maintenance duties during the day, is required to monitor the emergency call button system at night, and respond to any emergencies. There is a call button display panel in the custodian's apartment (Tr. p. 94).

45. In exchange for performing his duties, the custodian receives his apartment, rent-free, and is paid a salary of \$22,000.00 per year (Tr. p. 86).

46. In view of the fact that the applicant waives, or reduces rent, in cases of need, for the low-income elderly occupants of its facilities, and provides its other services, at no cost, I find that the benefits of the applicant's services are for an indefinite number of persons, that charity is dispensed to all who need and apply for it, and that no obstacles are placed in the way of those seeking the benefits.

47. Since the applicant is organized under the General Not For Profit Corporation Act, I find that the applicant has no capital, capital stock, or shareholders. I also find that no individual profits from the enterprise.

48. From a review of the applicant's financial statements and the testimony concerning same, I find that the applicant's funds are derived from primarily public and private charity, as well as rental payments from the residents in applicant's intergenerational housing facilities, and that said funds are held in trust for the objects and purposes expressed in its Articles of Incorporation.

49. I also find that the applicant owned the parcel here in issue

during the entire 1993 assessment year.

50. I further find that the parcel here in issue was a vacant lot on January 1, 1993.

51. During the entire assessment year 1993, I find that this parcel was in the process of adaptation for primarily charitable or exempt use.

52. Finally, I find that the building on the parcel here in issue was completed on May 5, 1994, and was occupied beginning on May 28, 1994.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

The citations in the applicant's brief are to the Property Tax Code (35 ILCS 200/1 et seq.). However, the Supreme Court, long ago, determined that the question of whether property is exempt from taxation, depends upon the constitutional and statutory provision in force, at the time for which the exemption is claimed. *The People v. Salvation Army*, 305 Ill. 545 (1922). This exemption application concerns the 1993 assessment year. The Property Tax Code became effective on January 1, 1994 (35 ILCS 200/1-1). The statute which was in force concerning the taxation and exemption of real property during the 1993 assessment year, was the Revenue Act of 1939 (35 ILCS 205/330). Consequently, the request for exemption here in issue will be considered pursuant to the terms of the Revenue Act of 1939.

35 ILCS 205/19.7 exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit,...."

It is well settled in Illinois, that when a statute purports to grant



an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956); *Milward v. Paschen*, 16 Ill.2d 302 (1959); and *Cook County Collector v. National College of Education*, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944) and *People ex rel. Lloyd v. University of Illinois*, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967); *Girl Scouts of DuPage County Council, Inc. v. Department of Revenue*, 189 Ill.App.3d 858 (2nd Dist. 1989); and *Board of Certified Safety Professionals v. Johnson*, 112 Ill.2d 542 (1986).

In considering whether or not the applicant qualifies as a charitable organization, in the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth five guidelines to be used in determining whether or not an organization is charitable. Those five guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; and (5) no obstacles are placed in the way of those seeking the benefits. Based on the foregoing, I conclude that the applicant met each of the aforestated five guidelines.

Illinois Courts have held property to be exempt from tax where it has been adequately demonstrated that the property is in the actual process of

development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st Dist. 1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987).

Based on the foregoing, I conclude that the land only of the parcel here in issue was in the process of adaptation for exempt used during the 1993 assessment year.

35 ILCS 205/27a provides in part as follows:

"The owner of real property on January 1 in any year shall be liable for the taxes of that year...."

Said section in the second paragraph goes on to provide as follows:

"However, the owner of real property on January 1 shall be liable, on a proportionate basis, for the increased taxes occasioned by the construction of new or added buildings, structures or other improvements on such property from the date when such improvement was substantially completed and initially occupied or initially used, to December 31, of such year."

As previously determined, the Nathalie Salmon House was only approximately 72% complete on December 31, 1993, the last day of the 1993 assessment year. Consequently, all that was assessable during 1993, and therefore, all that is the subject of this proceeding is the land only, of Cook County parcel No. 11-29-317-048-0000.

Both the building and the land should be assessed for the 1994 assessment year, pursuant to the second paragraph of 35 ILCS 205/27a, as recodified in the Property Tax Code, at 35 ILCS 200/9-180.

In the case of MacMurray College v. Wright, 38 Ill.2d 272 (1967), the Supreme Court considered whether or not faculty and staff housing owned by a college, was used for school purposes. In that case, the Court applied a two-part test. First, were the residents of the houses required to live in their residences because of their exempt duties for the college, or were they required to, or did they perform any of their exempt duties there?

The Courts have more recently applied the MacMurray tests to caretakers' residences in *Benedictine Sisters of the Sacred Heart v. Department of Revenue*, 115 Ill.App.3d 325 (2nd Dist. 1987); *Lutheran Child and Family Services of Illinois v. Department of Revenue*, 160 Ill.App.3d 420 (2nd Dist. 1987); and also *Cantigny Trust v. Department of Revenue*, 171 Ill.App.3d 1082 (2nd Dist. 1988), among others. The caretaker's apartment on the first floor of the building on the parcel here in issue during 1994, would appear to qualify for exemption since he was required to be the night monitor of the call button system, and that duty is performed in his residence.

The young single persons who live on the second, third, and fourth floors, and received a reduction in rent, in exchange for providing three hours a week of assistance to the elderly residents, do not appear to be required to live on the premises, and do not perform any of their exempt duties in their residences. The same is also true of the young, single persons living on the fifth floor who receive free room and board, in exchange for 12 hours a week of assistance.

Concerning the one, three-bedroom apartment on each of the second, third, and fourth floors, since no evidence was offered that the rent of the residents of those apartments was ever waived, or reduced, they do not meet guidelines (1), (4), or (5) of the Methodist Old Peoples Home case guidelines.

Consequently, it does not appear that all of this parcel and the building thereon, will qualify for exemption during the portion of 1994 assessment year, that both the land and building are assessable.

I therefore recommend that the land only of Cook County parcel No. 11-29-317-048-0000, be exempt from real estate tax for the 1993 assessment year.

I further recommend the applicant be required to file a new

application for exemption for the land and building, after the building becomes assessable, pursuant to the then appropriate statute.

Respectfully Submitted,

George H. Nafziger  
Administrative Law Judge

October , 1995